

United States Government
MEMORANDUM



Office of
Personnel Management

Subject: Post-Employment Restrictions on Government
Personnel -- The Ethics in Government Act of 1978

From: The Director, Office of Government Ethics

To: Heads of Departments, Independent Agencies and
Government Corporations

Date: 17 JAN 1979
In Reply Refer To:

Your Reference:

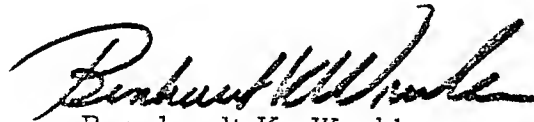
The Office of Government Ethics intends to propose promptly regulations giving guidance on Title V of the Ethics in Government Act of 1978 (the "Act"), entitled "Post-Employment Conflicts of Interest." Executive agencies have administrative enforcement responsibility under Section 501(j) of the Act.

It is important that this title be effectively enforced, while at the same time avoiding unnecessarily severe applications which do not serve its purpose but adversely affect the government's ability to attract and retain employees, and, consequently, the achievement of its programs. I know that the formulation of balanced rules is of great concern to all government agencies.

Accordingly, pursuant to Sections 403 and 402(c) of the Act, I request that each executive agency transmit to me in written form its comments on those matters which are of concern to it in connection with the formulation of the proposed regulations. This may take the form of specific proposed regulatory language or specific problems which should be treated or accommodated by regulation. In the latter case, it is strongly recommended that factually detailed examples be submitted so that we are properly educated as to real-world factors which must be considered. Each response should also designate a point of contact.

Without in any way trying to restrict suggestions, I have attached a list of questions and topics to which your staffs might give attention. Although this is the kind of matter which may appropriately be assigned to each agency's general counsel, I would recommend that, in addition, the views of managers and others in various areas be sought, inasmuch as we have seen some of the most valuable observations and problems articulated by those who have firsthand exposure. Those who manage or have official responsibility for technical programs appear to be particularly affected.

Responses should be submitted by January 26, 1979. Because of the need, in fairness, to apprise current employees as to their obligations as rapidly as possible, we believe that every effort should be made to meet this deadline.

A handwritten signature in dark ink, appearing to read "Bernhardt K. Wruble". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Bernhardt K. Wruble
Director

Questions and Topics Relating to the Post-Employment
Restrictions of the Ethics in Government Act of 1978

[Note: It is not intended that agencies confine themselves to these questions or answer all of them. We urge agencies to present their own problems in their own way. However, those marked with an asterisk should be addressed.]

1. Terms which may benefit from regulatory definition or examples:
 - a. "Participated personally and substantially"
 - o For example, does an official so participate with respect to each item in a budget he approves? If the item is not a "line item"? What if the agency has procedures for making certain budget items into "issues," and the item is not made an issue?
 - b. "Actually pending under his official responsibility"
(See 18 U.S.C. § 203)
 - c. "Intent to influence"
 - d. "Particular matter involving a specific party."
 - o What are instructive examples of matters not included in this definition? (Possible examples: decisions on such matters as formulation of regulations, procedures and generally applicable policy; participation in the formulation of scientific or engineering concepts, feasibility studies, or proposed programs prior to the formulation of a contract.) Matters that are?
- *2. What types of positions in your agency should not be designated by the Director pursuant to Section 501(d)(2) [18 U.S.C. § 207 (d)(2)]?
3. What tests should govern the designation of a "separate department or agency" under Section 501(e)? Examples in your own agency?
- *4. The exemption for scientific and technological information contained in Section 501(f) was described by one of its legislative sponsors as "essential to preserve the free flow of scientific expertise from industry to the government."

What guidelines could be established to separate communications or advice designed to determine and supply technical information which the government needs (for example, identifying deficiencies in system design or performance and offering solutions) from that aimed at promoting a product or at how to "play the government"? When cost information is directly tied to technical alternatives, may it be provided under this exemption? When may it not be provided? What examples may illustrate how to draw lines?

- *5. The foregoing exemption refers to "procedures acceptable to the department or agency concerned." What procedures are appropriate?
- 6. In connection with the exemption in Section 501(f) involving certification of certain individuals, would it be desirable to establish a registry for current employees and their areas of expertise to insure that if this exemption is used, there is some regularity in procedure? What procedure and tests might be employed in explicating the factors set forth in the Act?
- *7. What basic elements should be incorporated into the procedures required to be established by Section 501(j)?
- 8. What are examples of prohibited activities which should be specially emphasized to give guidance? What types of borderline cases need review?

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